

IRIS 2015-2/2

European Court of Human Rights: Urechean and Pavlicenco v. Moldova

In a case against Moldova, the European Court of Human Rights has decided that blanket immunity in defamation proceedings in order to guarantee the free speech rights of a president, violates the European Convention on Human Rights. The Court has examined many cases concerning limitations on the right of access to court in defamation cases by operation of parliamentary immunity (see e.g. IRIS 2003-3/2, IRIS 2003-7/2 and IRIS 2013-10/1), but this was the first occasion on which the Court had to address immunity from a civil libel suit which benefits a president and a head of State.

The applicants, Mr Urechean and Mrs Pavlicenco, were opposition politicians at the time. In two television programmes, the Moldovan president had been interviewed by journalists on various topics such as the economy, justice, foreign relations and elections. In the interviews the president stated, among other things, that Mr Urechean, as the mayor of Chişinău, had created “a very powerful mafia-style system of corruption” and that Mrs Pavlicenco “came straight from the KGB”. Both politicians brought libel suits against the president, but the Moldovan courts held that the president enjoyed immunity and could not be held liable for opinions which he expressed in the exercise of his mandate. Before the European Court of Human Rights, the applicants contended that the refusal of the domestic courts to examine the merits of their libel actions constituted a violation of their right of access to court under Article 6, paragraph 1, of the Convention.

It was undisputed that there was a limitation of the applicants’ right of access to a court as a result of the domestic courts’ refusal to examine the merits of their libel actions against the president. The parties also agreed that the limitation of that right was prescribed by law and pursued a legitimate aim. The question for the Court was whether a fair balance had been struck between the competing interests involved, namely between the public’s interest in protecting the president’s freedom of speech in the exercise of his functions and the applicants’ interest in having access to a court and obtaining a reasoned answer to their complaints.

The Court found that, in the circumstances of the case, such a fair balance had not been struck. Although a head of State’s task is not, unlike that of a member of Parliament, to be actively involved in public or political debates, the Court considered that it should be acceptable in a democratic society for States to afford some functional immunity to their heads of State in order to protect their free speech in the exercise of their functions and to maintain the separation of powers in the State. Nevertheless, such immunity, being an exception from the general rule of civil responsibility, should be regulated and interpreted in a clear and restrictive manner. In particular, the Court was of the opinion that the Moldovan courts had not addressed the question of whether the then-president of Moldova had made the statements about the applicants in the exercise of his mandate. Nor did the relevant constitutional provision define the limits of presidential immunity in libel actions. The Court furthermore observed that the immunity afforded to the president was perpetual and absolute and could not be lifted. The Court considered that conferring such blanket immunity on the head of State in the application of the rule of immunity was to be avoided.

The lack of alternative means of redress was another issue considered by the Court, as the Government submitted that the applicants, being politicians, should have resorted to the media to express their points of view on the President’s allegations about them. The Court however considered relevant its findings in *Manole and Others v. Moldova* (see IRIS 2009-10/1), which provided that at the material time there were only two television channels with national coverage in Moldova, one of which was involved in the present case and refused to offer airtime to one of the applicants, the other being State television. In view of that and of the findings in *Manole and others* concerning the administrative practice of censorship on State television, the Court was not persuaded that the applicants had at their disposal an effective means of countering the accusations made against them by the head of State during the television interviews at issue.

The Court concluded, by four votes to three, that the manner in which the immunity rule was applied in the instant case constituted a disproportionate restriction on the applicants’ right of access to a court and hence violated Article 6, paragraph 1, of the Convention. According to the dissenting judges, the Moldovan courts had sufficiently established that the president’s statements fell within the exercise of his mandate. They also contended that the findings in *Manole and others* concerning the practice of censorship on State television were totally irrelevant to the instant case. According to the dissenters, the applicants could have relied on their right of reply or on other national legislation providing for a number of alternative means of redress in cases of defamation of honour, dignity and professional reputation. Furthermore, in their capacity as politicians the applicants fell within the category of persons open to close scrutiny of their acts, not only by the press, but also - and above all - by bodies representing the public interest, the risk of some uncompensated damage to reputation being, as a consequence,

inevitable. On this basis, the dissenters found no violation of Article 6, paragraph 1.

- Judgment by the European Court of Human Rights (Third Section), case of Urechean and Pavlicenco v. Moldova, Appl. Nos. 27756/05 and 41219/07 of 2 December 2014

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Dirk Voorhoof

Ghent University (Belgium) & Copenhagen University (Denmark) & Member of the Flemish Regulator for the Media

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